

**MINUTES  
HAMPTON ZONING BOARD OF ADJUSTMENT  
THURSDAY, July 21, 2005**

MEMBERS PRESENT: Mike Kennedy, Chairman  
Robert V. Lessard, Vice Chairman  
Matthew Shaw  
Jack Lessard (sitting in for Tom McGuirk)  
Bill O'Brien (sitting in for Jennifer Truesdale)

OTHERS PRESENT: Kevin Schultz, Building Inspector  
Shirley Doheny, Recording Secretary

The chairman called the meeting to order at 7:00 p.m. It was announced that Petition 36-05 has been withdrawn. Mike Kennedy also announced his withdrawal from the Board stating that this would be his last meeting. Vic Lessard will take his place as Chairman. The Board voted that Bill O'Brien become a permanent member of the Board rather than an alternate.

35-05 The petition of Summer Realty Trust for property located at 7 Dover Avenue seeking relief from Articles 4.5.3, 6.3.1, 8.2.1, 8.2.2, 8.2.3, 8.2.4, 8.2.5 and 8.2.6 to replace an existing non-conforming 2-unit building on the rear of the lot with a new 2-unit condominium building, leaving the front building intact, which will either decrease or not increase the existing non-conformities (lot area per dwelling unit, side setbacks, rear setback, parking, recreation area, frontage, multi-family setbacks, buffers, driveway construction and driveway separation) but not eliminate them. This property is located at Map 296, Lot 133, in a RB zone.

Atty Bob Casassa was present filling in for Atty. Peter Saari with Mike Macera of Sumner Realty Trust came forward. Atty. Casassa discussed the relief that was needed. He went through the five criteria as submitted in petition.

*Questions from the Board*

Vic Lessard asked about the deed restriction. Was told there are 7 foot set-backs. Mr. Vic Lessard asked if this Board could grant this. It was Atty Casassa's opinion that the Board can grant variances from ordinances, not deed restrictions. Mr. O'Brien asked about 4.5.2. It was clarified that it was 4.5.3 that was noticed to abutters. He also asked about steps. Atty Casassa explained that the stairs were shown for demonstrating an egress. Mr. Casassa stated they would do what was required to stay out of 7 foot set back. Vic Lessard asked about parking. There are presently four spaces. Bill O'Brien expressed the same concern. Atty Casassa recognizes parking issues but stated that there are the same amount of units being proposed.

*Comments from the audience*

Steve Joyce of 12 Dover Ave. came forward. He asked whether making condo units was a form of subdivision stating that the deed restriction states no subdividing. Kevin Schultz stated that this has been discussed and that the Town Atty is reviewing this matter. He also expressed concern about parking and referenced 6.2 and asked if it would apply. He thinks there might be two legal parking spaces on the property. Shuffling of cars does impact him.

Dominique Perreault from the Drift Motel at 18 Ocean Blvd. came forward. He asked about the proposed height. Atty Casassa stated they would be in compliance because no variance was sought. Mr. Perreault stated the new dwelling would impact the light coming into a number of his motel units.

Mr. Mullen of 8 Dover Ave, asked about parking also. He asked if parking spaces would be assigned to units. Mr. Masara stated his hopes to make units better in order to rent units longer and have less turnover.

Dorothy Adams of 9 Dover Ave stated that parking is a problem. When there is no room for people to get through the parking they climb fence into her yard.

#### *Back to board*

Mr. O'Brien read the letter submitted by Lynn Ann Grainger, owner of 3 and 5 Dover Ave. Letter referenced concern about parking and trash being thrown in her yard. Matt Shaw stated his concern regarding the parking issue. He thinks making property nicer will make parking problem worse. Vic Lessard stated he couldn't vote in favor because of parking issue. Matt Shaw questioned parking underneath the units. Kevin Schultz asked about occupancy load. Jack Lessard also has issue with parking.

Matt Shaw made motion to deny petition, Jack Lessard seconded to deny variance because parking does not meet the requirements for the variance to be granted. It was questioned whether fixing parking would be a substantial change to be allowed to come back. Mr. Kennedy also has a problem with parking especially with more bedrooms.

**VOTE: 5-0**

**PETITION DENIED**

37-05 The petition of Verizon Communications, through Bay State Design Associates, for property located at 169 Winnacunnet Road for a Special Exception for the expansion of a pre-existing Special Exception use in a residential zone to install new updated HVAC equipment and a new enclosure fence to accommodate cooling loads required by telephone exchange equipment. This property is located at Map177, Lot 42 in a RA zone.

David Mains of Baystate Design for Verizon and Team Leader for real estate construction in the area came forward. New plans were presented to allow reduction of the size of the units outside. Mr. Mains requested two amendments to the application be made. Section C response should read "Existing screening and landscaping buffer requirements will be maintained" and Section D response should read "the proposal include expansion of paving to accommodate the relocation of the existing 8 parking spaces and no changes to the existing curb cut and driveway" Mr. Kennedy asked if Board agreed to accepting changes. Board agreed to change wording. The plan C2 from new packet does not show the extension of paving.

#### *Questions from the Board*

Vic Lessard asked why they have to add extra hot top. Answer was to maintain the required aisle width and the parking area requirements. Vic Lessard asked Mr. O'Brien to read a letter that was submitted from Arthur Moody. Vic Lessard asked if they would put all parking out back. Matt Shaw asked if unit would still be fenced in. Mr. O'Brien asked if everything would be in fence. Mr. Mains said it would.

#### *Comments from the audience*

Barb Jensen asked about fence and whether the units would be louder. New units will carry current load and future load. The fan would not be running as often. The current generator is about five years old. Vic Lessard suggested silent generator when this one is replaced.

#### *Back to board*

Vic Lessard motioned to approve petition as requested subject to removing hot top in front and return to lawn and a corrected complete set of plans be submitted.

Mike Kennedy polled the Board, and the Board agrees the five criteria were met.

**VOTE: 5-0**

**PETITION: GRANTED**

38-05 The petition of Renee Cooper for property located at 15 James Street seeking relief from Articles 1.3, 4.5.1, 4.5.2 and 4.5.3 for the substantial renovation of existing non-conforming house and adding a (conforming) third floor. This property is located at Map 131, Lot 496 in a RA zone.

Renee Cooper and her architect came forward. She would like to substantially renovate house. Maintain rear and side footprint, and bring in front to relieve some of the nonconforming. Renee Cooper read facts supporting variance from petition. John (TMS architects) showed drawings of the property. Plan is to reduce the overall footprint. New bulkhead will be flush against house in order to leave parking spaces. The footprint of the second floor is smaller than the first floor.

#### *Questions from the Board*

Bill O'Brien asked what was meant by substantial renovation. Renee Cooper is not sure, but would like to salvage what is possible. The foundation is sound but she is unsure about the rest. He also asked about the decks. The deck that faces the ocean is outside of her property.

#### *Comments from the audience*

Kathleen Mattheson of 18 Ancient Highway. She asked about a driveway. The driveway is 10 feet wide. She expressed concern about parking. People park in the Town Right of Way. She also questioned where a dumpster would be during construction.

J. Gould speaking for his mother. He questioned the location of the air conditioning unit being moved from east side to west side of house. It was suggested to keep it where it is on something non-permanently attached.

Mrs. Doggett expressed concern that there are always people parking in the right of way. The Town doesn't do anything about people parking illegally. Mike Kennedy stated that this Board could not do anything about people parking illegally. It is only required that Ms. Cooper have parking on her property.

Norma Collins of 6 James Street expressed concerns about parking. People park in right of way all the time. Mike Kennedy stated that a single family dwelling only requires two parking spaces. Vic Lessard suggested calling Town manager and Selectmen. Steps are being pulled into property line.

Tommy Broderick of 8 Beach Plum Way also expressed concern about parking. He believes any development in this area is a public issue. He also stated that not all decks are encroaching on public way.

#### *Back to board*

Mr. O'Brien asked about existing foundation. He stated that by putting in a new foundation on one side this constitutes new structure therefore cannot be in 7 foot setbacks. If the town requires they can ask them to remove the deck that is across the lot line. Mike Kennedy doesn't like the deck on public land. The variances they are asking for don't have anything to do with decks. Deck has been there a long time. Matt Shaw concerned about 20 foot set back. Kevin Schultz

stated that if you remove a portion of a building that violates a deed restriction, you can't put it back within the 7 foot set back. It was suggested to build on current foundation. Matt Shaw asked the Town Atty about the 7-foot boundary line. Town Atty looked at drawings. The question is because of piece of wall being put up, does putting up a wall constitute new construction. Atty Gearreald stated that the Board does not have power to grant a variance from deed restriction. Safest course is to make request back to 7 foot set back. Mr. O'Brien asked if approval would include the deck. Atty Gearreald suggested that any approval include that this approval does not include approval of a deck on Town property. This Board cannot enforce deed restriction. Kevin Schultz can't allow permit with deed restriction. Hampton will not allow erection of a building within seven feet of the boundary. Only town meeting can waive deed restrictions. The safest thing is to build outside the 7 foot set back. Bill O'Brien motioned to approve the plan except there be a seven foot setback along street side all along that course assuming they are only repairing that north wall. If they have to do any of the other walls then they have to come back to the Board. And in no way does our approval cover the deck that exists on town property. Vic Lessard suggested that they come back with a new plan that does not go into the set back. Bill O'Brien changed the wording of the motion to approve the plans with the stipulation that the Board is not passing comment on anything that would be within the 7-foot deed restriction which would be addressed between the Building Inspector and Town Meeting. The Board gives their approval for the zoning variances, and in no way does our approval cover the deck that exists on town property. Seconded by Jack Lessard. Mike Kennedy polled the Board, and the Board agrees the five criteria were met.

**VOTE: 5 – 0**

**PETITION GRANTED**

**39-05** The petition of George Snow, through David Snow, for property located at 34 Mill Pond Road seeking relief from Article 4.2 to subdivide the property to create 2 lots, one lot consisting of the single family portion and the second consisting of the multi-family portion where neither lot would have 75 feet of frontage. This property is located at Map 150, Lot 2 in a RB and RA zone.

Atty Robert Casassa filling in for Atty. Saari and David Snow came forward. Atty Casassa went to petition regarding 4.2. An area variance is requested. He read the criteria as stated in the petition. When this matter was previously before this Board there was a looping road between Mill Pond and Glen Road and a proposal for six units. The present proposal asks for 2 single-family dwellings. Atty. Casassa stated that as far as density, the proposal meets or exceeds that which exists on Mill Pond and Glen Road. The parking would be off of Glen Road contained on Lot 2. The two structures are within RB Zone.

#### *Questions from the Board*

Matt Shaw asked if existing home would remain the same. Bill O'Brien asked Mike Kennedy stated that in an RB zone a two family is permitted but by Hampton Zoning ordinances definition, a two family dwelling is a single building containing two individual dwelling units. Kevin Schultz stated that you can't have two individual structures on a single lot. You can have two dwelling units connected by a common party wall or you can have a multi family. The discussion was continued regarding the subdivision of the frontage.

#### *Comments from Audience*

Randall Radkay of 72 North Shore Road. He has a problem with wording that they are trying to create two lots. One being single-family portion and the second being multi family portion. A multi family portion would require 100 foot of frontage. He would like Board to consider putting a restriction in that would prevent them from issuing easements that would enable a looping driveway coming from RA lot to the RB lot.

Terry Stukowski of 80 North Shore Road. He hopes this is not a back door way to later subdivide RA lot. A multi family is three or more units. The proposal shows two units. He would like to leave his opposition on the record for reasons stated in the letter he sent the Board.

Carlene Dillon of 33 Glen Road stated that Glen Road does abut a slow draining area. According to Note 6 regarding impervious area, this will affect the run off. The size of the structures on the page with the map is 28.8 X 54. She would challenge anyone to find structures of this size. She also questions how with garages under they will get through it. Map showing ledge under building. There are two conservation easements that have been designated to Rockingham County. Asks for relief from 4.2 and doesn't mention Article 1 sec, 1.3. How can you take a non-conforming lot and subdivide and make them both conforming. Mr. and Mrs. Snow were aware that they had a piece of land locked land. Ms. Dillon disagrees with statement that the variance would not be contrary to public interest. She stated that the lack of frontage is a problem. The additional cars, guests, delivery and service trucks will have a detrimental impact on neighbors. During construction how will construction equipment get there? The cement trucks, how will they get in? The recycling truck cannot turn around. She also mentioned the added burden on utilities and town services. Ms. Dillon requests that the Board deny the petition.

The petitioner stated that previous design was to relieve a number of the things that were discussed tonight. The present proposal is an effort to address concerns that were previously mentioned. He doesn't want to hurt the neighborhood.

Edward Peck, of 30 Glen Road stated that he and his wife are against this petition. They believe it is an already congested area. The problem remains that more traffic would be a problem. He asked about water and sewer being extended which brings up concerns about blasting.

Byron Moe, of 30 Mill Pond Road stated that when he purchased his home he did so because he believed that the RB portion of the petitioner's land was not usable because there was not enough frontage to use. Ledge and water run off are also a concern. He presently has a dry basement and is concerned that this might change. He stated his concern about the effect the blasting would have on the water table as well as what it might do to his home and the foundation. He also expressed concern about the traffic generated on an already burdened street. He is opposed to granting of variance.

#### *Back to Board*

Vic Lessard brought up the issue of the frontage. Matt Shaw thinks it is a good plan compared to last one, but 13 feet of frontage when 75 is needed is a stretch. Bill O'Brien has no problem with proposal but he does have a problem with the frontage. Jack Lessard stated that the frontage bothers him also. Vic Lessard stated 13 feet of frontage is a problem and he can't vote for this. Mike Kennedy doesn't like 13 foot frontage or 29 foot frontage. He'd like to be able to see use of this lot but he is also concerned about the water issue and short frontage.

Motion: Jack Lessard motioned that petition be denied because the request for a 13 foot frontage is too small. After further discussion, Bill O'Brien seconded the motion.

Atty Casassa mentioned that in 2000, the prior Board approved to subdivide but it was not exercised at that time. Atty. Casassa asked about the possibility of withdrawing in light of the history. Mike Kennedy stated if Mill Pond had a cul de sac this would have had enough frontage. He believes criteria have been met except contrary to the public interest. He is concerned about putting buildings at the end of a road that is already difficult for fire trucks to get to. He gets the sense that the Board would not approve the variance; he suggests it may be a good idea to allow the petitioner to withdraw the petition. The applicant requested to withdraw and resubmit. Jack Lessard motioned to allow them to withdraw. Bill O'Brien seconded the motion. The vote was 4 in favor to allow withdrawal and 1 abstention. Mr. Moe asked about the open motion to deny this

petition. Mr. Kennedy then moved the open motion to deny the variances. The vote was 4 to not approve the motion to deny and 1 abstention. Jack Lessard motioned to allow the petitioner to withdraw his petition again. Bill O'Brien seconded the motion.

**VOTE: 4-0-1**

**PETITION TO WITHDRAW GRANTED**

**40-05** The petition of Jean Boudreau, through option holder M.K. Ashworth, LLC, for property located at 154-156 Ashworth Avenue seeking relief from Articles 4.1.1, 8.2.1, 8.2.2, 8.2.3, 8.2.4, 8.2.5 and 8.2.6 to construct a seven (7) unit residential condominium; existing home and motel to be demolished. These properties are located at Map 293, Lots 92 and 110 in a BS zone.

Atty. Steve Ells for option holder, M.K. Ashworth, LLC and Kevin Derrivan came forward. One lot is improved with one single family home the second has 6 unit motel. The request is to demolish both and replace with 7 unit residential condominium. Steve asked architect, to explain proposal. He stated that 14 parking spaces are at grade 7 units above. The second floor has 3 flats and third and fourth floor has 2 townhouses each. Vic Lessard asked how many bedrooms per unit. He was told 2 bedrooms per unit. Bill O'Brien asked about the trees on the rendering in the front of building. Steve Ells stated that the rendering is not exactly to scale. The site plan is correct for fencing on property line. Vic Lessard asked if corner building is staying. He asked about parking for that lot. Atty Ells stated that the corner lot was a separate lot. They were there regarding redeveloping the other two lots. They are requesting 7 units and 14 parking spaces. Mr. Lessard stated that they don't meet set backs for multi family. That is why they are before the Board. Atty. Ells stated that Mr. O'Brien was correct about the trees in front and that the tree on the left would never be and they would make an effort to keep the other one. Steve went through the five criteria as stated on the petition.

#### *Questions from the Board*

Bill O'Brien asked about the bedrooms again. It was corrected that there are 12 bedrooms not 14. He then asked about spiral staircases. They are within the units between floors. Kevin stated there could be a problem with spiral staircases.

#### *Comments from the audience*

Stanley Wojcik of 6 Bragg Ave came forward. He doesn't think it fits in the neighborhood. He questioned the height of the building. He stated that it is an obstruction of his view. He stated that they were taking away more parking than putting back. Presently, the corner lot uses his property. Mr. Wojcik questioned recreation area and frontage of 100-foot requirements. He opposes this petition.

Mary Freely, She would object to height but understands it does not need height restriction. She doesn't think there are any units like this. Ms. Freely referenced a prior petition that requested demolition of current building to allow more parking. This is a much more dense use of the property. Atty. Ells stated the prior proposal was to do a condo conversion of Bragg House and take down dilapidated motel and use that for parking. It was granted but it never happened.

Pam Auch of 8 Bragg Ave, stated there are existing problems in neighborhood, water is a problem and corner property has no parking.

#### *Back to board*

Steve Ells stated he thought this would help water problem. He reiterated that they have nothing to do with corner property. It is not applicant's responsibility to fix all problems. Vic Lessard says this property had problems before Unit 2B and 2A, and two family on corner with no parking. Vic Lessard is concerned about parking. He feels Board would cause a hardship if granted. Bill O'Brien asked about parking space #8 and if first floor was open all around. He thinks there are too many apartments. He suggested making fewer units. Vic Lessard motioned to not approve petition based on need to get variance from multi-family setbacks. Bill O'Brien seconded

**VOTE: 2-2-1                      PETITION did not carry**

Vic Lessard Motioned to allow petitioners to withdraw without prejudice. Matt Shaw seconded.

**Vote 5-0                      Motion carried**

Petitioners requested that the Board go forward.

Vic Lessard motioned to approve petition. Matt Shaw seconded.

**Vote 3-1-1                      Motion did not pass**

Atty Ells asked the Board to allow the applicant to withdraw without prejudice?

Matt Shaw motioned to accept the petitioner's motion to withdraw. Vic Lessard seconded

**Vote 5-0                      Motion granted**

Motion to close public meeting by Jack Lessard seconded Mike Kennedy at 11:55.

#### BUSINESS SESSION

Atty Gearreald came to speak before the Board

It concerned him that the Board allowed 5 parking spaces along frontage. He said ZBA doesn't have authority to do so. Parking has to be on site. By statute only Board of Selectmen can allow, they were not asked. Zoning Board can allow off site or less but not on right of way parking.

Atty. Gearreald would like to request being remanded to this Board.

Hampton Zoning Board of Adjustment  
Michael Kennedy, Chairman